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September 25, 2006

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: June 9, 2006

Case Number: TSO-0395

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter "the individual") to hold an access authorization.<sup>1</sup> The regulations governing the individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the individual should be granted access authorization. As discussed below, I find that access authorization should not be granted in this case.

I. BACKGROUND

This administrative review proceeding began with the issuance of a notification letter by a Department of Energy (DOE) Office, informing the individual that information in the possession of the DOE created substantial doubt pertaining to his eligibility for an access authorization in connection with his work. In accordance with 10 C.F.R. § 710.21, the notification letter included a statement of the derogatory information causing the security concern.

The security concern cited in the letter involves the individual's excessive use of alcohol. According to the letter, a DOE consultant psychiatrist found that the individual had used alcohol

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1/ An access authorization (or security clearance) is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

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abituallly to excess and diagnosed the individual as an abuser of alcohol. The notification letter also pointed out several alcohol-related incidents involving the individual and domestic violence or driving while intoxicated. The letter stated that this constitutes derogatory information under 10 C.F.R. § 710.8(j)(hereinafter Criterion J).<sup>2</sup>

As the letter also noted, the DOE consultant psychiatrist indicated that the individual's abuse of alcohol is an illness which causes or may cause a significant defect in the individual's judgment or reliability. This constitutes a security concern under 10 C.F.R. § 710.8(h)(Criterion H).

In his written report to the DOE, the DOE consultant psychiatrist indicated that one way for the individual to demonstrate adequate evidence of rehabilitation from alcohol abuse would be to show attendance at Alcoholics Anonymous (AA) meetings with a sponsor at least once a week for a minimum of 200 hours over at least a two year time frame, and maintain abstinence from alcohol (and all non-prescribed controlled substances) for a minimum of two years. The consultant psychiatrist indicated that in the alternative, the individual could complete a professionally run alcohol treatment program, including aftercare, for a minimum of six months, and abstain from alcohol and all non-prescribed controlled substances for a minimum of three years after completion of the program.

The notification letter informed the individual that he was entitled to a hearing before a Hearing Officer, in order to respond to the information contained in that letter. The individual requested a hearing, and that request was forwarded by the DOE Office to the Office of Hearings and Appeals (OHA). I was appointed the Hearing Officer in this matter. In accordance with 10 C.F.R. § 710.25(e) and (g), the hearing was convened.

At the hearing, the individual testified on his own behalf, and presented the testimony of a friend, his doctor, his former wife, his daughter and a supervisor. The DOE counsel presented the testimony of the DOE consultant psychiatrist.

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2/ Criterion J security concerns relate to an individual's use of alcohol habitually to excess, or to an individual's having been diagnosed by a psychiatrist or licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.

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## II. Hearing Testimony

### A. The Individual

The individual does not fully agree that he is an alcohol abuser, although he does admit that alcohol use has caused some problems in his life. Tr. at 51-52; 55. The individual stated that because of the problems that alcohol has created for him, he ceased alcohol use as of July 2, 2006, about six weeks prior to the hearing. He further stated that he has been attending AA meetings once a week for about one month. Tr at 54. He testified that immediately prior to his abstinence, his typical weekly usage of alcohol was approximately two beers after work three times per week and three or four beers a day on Saturday and Sunday. Transcript of Hearing (Tr.) at 48.

### B. Former Wife

The individual's former wife stated that she married the individual in 1981 and they were divorced four years later. However, they have remained in close contact since that time and see each other about once a week, because the individual takes care of her children. She stated that he is very responsible about taking care of them and is also a good father to his own child. Tr. at 17, 19, 26. She stated that she disapproves of all use of alcohol, and does not allow alcohol in her home. Tr. at 11. Referring to the 1998 domestic violence incident cited in the notification letter, she testified that the individual brought some beer into her home, and when he refused to remove it, she became upset and called the police. Tr. at 12-17, 23. However, she admits she may have overreacted during that incident. She states that the individual told her he has been abstinent from alcohol for about two months and she believes him. Tr. at 21.

### C. Daughter

The daughter indicated that the individual has been a good father to her. Tr. at 30. She stated that recently she has seen him two or three times a week because he has been taking care of her during her recuperation from an eye injury. Tr. at 31-32. She indicated that she has not seen him use alcohol in three or four months. Tr. at 32.

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D. Individual's Former Neighbor/Friend and Supervisor

The individual's supervisor stated that he has known the individual for about seven or eight years and has been his supervisor for that period. Tr. at 36. He stated that the individual is an outstanding employee and he has never known the individual to use alcohol while on the job. He does not socialize with the individual. Tr. at 37-38. He stated that the individual told him he has not had any alcohol "for a few months," and has been going to AA meetings. Tr. at 40-41.

The individual's former neighbor/friend stated that he has known the individual for about four years. He indicated that the individual moved away from the neighborhood about a year ago, although they still get together frequently. Tr. at 71. He stated that he and the individual used to get together and have about four beers. Tr. at 74. He indicated that he has seen the individual for the past four weekends during the period noon through 7 p.m., and has not seen him use any alcohol during that time. Tr. at 79.

E. Individual's Doctor

The individual's doctor stated that he met the individual about 26 days before the hearing and has seen him twice during that time. Tr. at 91, 96. He diagnosed the individual with alcohol dependence. However, based on what the individual has told him he believes that the dependence is in full remission because the individual has not used alcohol "in several months." Tr. at 93. He had no opinion on whether the individual will remain abstinent. Tr. at 93. According to the doctor, in order to demonstrate rehabilitation, the individual should remain abstinent for six months and attend AA three or four times a week with a sponsor over a six month period. He indicated that a six-month abstinence period is sufficient for him to conclude that the individual has a "good chance" of remaining abstinent. Tr. at 95, 104, 105.

F. The DOE Consultant Psychiatrist

The DOE consultant psychiatrist reiterated his original diagnosis that the individual was an abuser of alcohol and explained the signs and symptoms displayed by the individual that led him to that diagnosis. Tr. at 58-59. He also continued to maintain that in order to show he is rehabilitated, the individual should attend AA meetings at least once a week for 200 hours over a period of at least one year, and abstain from use of alcohol for two years. Tr. at 61. Since, at the time of the hearing, the individual had not

yet completed this type of program, the DOE consultant psychiatrist believed that there is a high risk of relapse for the individual at this point. Tr. at 62. He believed that the individual was demonstrating some signs of rehabilitation, but that it was not adequate as of the time of the hearing. Tr. at 63.

### III. Applicable Standards

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a strong presumption against the granting or restoring of a security clearance. See Dep't of Navy v. Egan, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of the national security test" for the granting of security clearances indicates "that security-clearance determinations should err, if they must, on the side of denials"); Dorfmont v. Brown, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. Personnel Security Hearing (Case No. VSO-0002), 24 DOE ¶ 82,752 at 85,511 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. Personnel Security Hearing (VSO-0005), 24 DOE ¶ 82,753 (1995), aff'd, 25 DOE ¶ 83,013 (1995). See also 10 C.F.R. § 710.7(c).

### IV. Analysis

The issue in this case is whether the individual has mitigated the Criteria J and H security concerns, by demonstrating that he is reformed and/or rehabilitated from his alcohol abuse. As discussed below, I find that the individual has not resolved the concerns.

I believe that, as he contends, the individual has abstained from alcohol since July 2, 2006. The individual's personal witnesses testified convincingly in this regard. I also believe that he has attended some AA meetings during that time. Therefore, he has certainly taken important steps towards controlling his alcohol use.

However, the individual has not brought forward evidence convincing me that he is rehabilitated from his excessive use of alcohol, whether it is classified as abuse or dependence. As both of the expert witnesses testified, the individual has not yet completed a full rehabilitation program. Under the programs suggested by either the DOE consultant psychiatrist or his own doctor, the individual has not yet sufficiently participated in AA or maintained abstinence for an adequate period. Based on the evidence in this case, I believe that the individual needs some additional time of participation the AA program, with a sponsor, and a longer period of abstinence in order to demonstrate that he should be granted an access authorization.

For similar reasons, I find that the individual has not resolved the Criterion H security concerns referred to above.

#### V. CONCLUSION

As the foregoing indicates, the individual has not resolved the Criteria J and H security concerns cited in the Notification Letter. It is therefore my decision that the individual should not be granted an access authorization at this time.

The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Virginia A. Lipton  
Hearing Officer  
Office of Hearings and Appeals

Date: September 25, 2006